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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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10 CRYSTAL MITCHELL,

11 Plaintiff,

12 v.

13 UNITED HEALTH CENTERS OF THE  
14 SAN JOAQUIN VALLEY, a *Colorado*  
*corporation*,

15 Defendant.  
16

Case No. 1:23-cv-00060-JLT-EPG

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING (1) GRANTING  
PLAINTIFF'S REQUEST FOR JUDICIAL  
NOTICE AND (2) GRANTING PLAINTIFF'S  
MOTION FOR CLASS CERTIFICATION

(ECF Nos. 46, 54).

OBJECTIONS DUE WITHIN THIRTY (30)  
DAYS

17 Plaintiff Crystal Mitchell ("Plaintiff") is a former hourly, non-exempt employee of  
18 Defendant United Health Centers of the San Joaquin Valley ("Defendant" and "UHSJ") who  
19 worked as a staff accountant at Defendant's facility. Plaintiff alleges that Defendant violated  
20 state labor laws by failing to include bonus calculations into the rate of pay for paid time off  
21 ("PTO"). Plaintiff further alleges that Defendant did not pay out all unpaid PTO to former  
22 employees upon separation.

23 Plaintiff requests that the Court take judicial notice of the Register of Actions from  
24 consolidated state court case against Defendant, *Moreno v. United Health Centers of the San*  
25 *Joaquin Valley*, Fresno County Superior Court No. 22CECG01601.3 (the "State Court Action").  
26 Plaintiff also seeks class certification of one proposed class and one sub-class based on Plaintiff's  
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1 failure to pay PTO with the bonus calculation, and failure to pay out all unpaid PTO to former  
2 employees upon their separation.

3 For the following reasons, the Court recommends that Plaintiff's request for judicial  
4 notice and Plaintiff's motion for class certification both be granted.<sup>1</sup>

### 5 **I. PROCEDURAL BACKGROUND**

6 On January 11, 2023, Plaintiff initiated this action by filing a class action complaint in the  
7 United States District Court for the Eastern District of California. (ECF No. 1). Plaintiff filed her  
8 First Amended Complaint on March 3, 2023. (ECF Nos. 6).

9 On December 23, 2024, Plaintiff filed a motion for class certification. (ECF No. 46).  
10 Defendant filed an opposition to Plaintiff's motion for class certification on January 31, 2025.<sup>2</sup>  
11 (ECF No. 50). On February 10, 2025, Plaintiff filed a reply to Defendant's opposition. (ECF No.  
12 53). That same day, Plaintiff also filed a request that the Court take judicial notice of the  
13 "Register of Actions from consolidated case *Moreno v. United Health Centers of the San Joaquin*  
14 *Valley*, Superior Court of California, County of Fresno Case No. 22CECG01601." (ECF No. 54  
15 at 2).

16 The Court held a hearing on the motion for class certification on February 28, 2025. (ECF  
17 No. 55).

### 18 **II. PLAINTIFF'S FIRST AMENDED COMPLAINT**

19 In Plaintiff's First Amended Complaint (ECF No. 6), Plaintiff alleges she was an hourly,  
20 non-exempt employee of Defendant from about March 2, 2015, to October 20, 2022. (*Id.* at 3, 8).  
21 Plaintiff's amended complaint pleads both individual and class claims against Defendant for  
22 violations of the California Labor Code, Fair Labor Standards Act, IWC Wage Orders, and  
23 California Business and Professions Code. (*Id.* at 1, 11-18).

24 Plaintiff alleges that during her employment with Defendant she was not paid for every  
25 hour she worked because Defendant used an impermissible but uniform policy and practice of  
26 rounding its employees' time to the nearest quarter hour. (*Id.* at 3). Plaintiff says this practice  
often resulted in her not being paid for all the time she worked and not being paid all her

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27 <sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and District Judge  
Jennifer L. Thurston's Standing Order in Civil Cases. (*See* ECF No. 18 at 3).

28 <sup>2</sup> Defendant was granted an extension to file its opposition until January 31, 2025. (ECF No. 49).

1 overtime. (*Id.*). Plaintiff alleges that Defendant also failed to include commissions, non-  
2 discretionary bonuses and other items of compensation (including shift premiums and  
3 differentials) when determining all the non-exempt California employees' regular rate of pay for  
4 purposes of determining overtime. (*Id.* at 5).

5 Plaintiff further alleges that she and Defendant's other non-exempt California employees  
6 were also entitled to sick pay. (*Id.*). However, any sick pay used appeared on employees' wage  
7 statements as "PTOU", which constituted unscheduled PTO. (*Id.*). Plaintiff alleges that  
8 Defendant failed to include commissions, non-discretionary bonuses and other items of  
9 compensation (including shift premiums and differentials) when determining Plaintiff's and  
10 Defendant's other non-exempt California employees' regular rate of pay for purposes of sick pay.  
11 (*Id.* at 5).

12 Additionally, Plaintiff alleges that she was entitled to meal breaks in accordance with  
13 California law, but was not always authorized or permitted to take compliant meal breaks. (*Id.* at  
14 6). Specifically, throughout her employment Plaintiff sometimes worked shifts in excess of ten  
15 (10) hours. (*Id.*). Plaintiff says Defendant did not afford Plaintiff the opportunity for a second  
16 meal period during any eligible shift during her employment. (*Id.*). Plaintiff says that Defendant  
17 also often required her to work during meal breaks due to understaffing issues. (*Id.*).  
18 Furthermore, when not afforded meal breaks, Plaintiff says Defendant did not pay Plaintiff  
19 premiums as required by California law.<sup>3</sup> (*Id.*).

20 Plaintiff further alleges that wage statements issued by Defendant failed to accurately  
21 show:

- 22 a. The gross wages earned, in violation of section 226(a)(1);
- 23 b. The total hours worked by the employee in violation of section 226(a)(2);
- 24 c. The net wages earned, in violation of section 226(a)(5); and
- 25 d. All applicable hourly rates in effect during the pay period and the corresponding  
26 number of hours worked at each hourly rate in violation of section 226(a)(9).

27 (*Id.* at 7).

28 Plaintiff's first cause of action alleges that, during the relevant time period, Defendant  
intentionally and willfully failed to pay Plaintiff at least minimum wage for all time worked, in

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<sup>3</sup> Plaintiff also alleges that because Defendant failed to pay the required premiums, this also  
affected her bonus earnings and other non-discretionary pay. (ECF No. 6 at 6).

1 violation of California Labor Code section 1182 et seq. (*Id.* at 12-13).

2 Plaintiff's second cause of action alleges that Defendants intentionally and willfully failed  
3 to pay all overtime wages due to Plaintiff in violation of the Fair Labor Standards Act and  
4 California Labor Code §§ 510 & 1198. (*Id.* at 13).

5 Plaintiff's third cause of action alleges that during the relevant time period, she was not  
6 provided with compliant meal breaks, nor did she receive an additional hour of premium pay for  
7 each missed meal break at the required regular rate of compensation in Violation of Labor Code  
8 §§ 226.7, 512 And IWC Wage Orders. (*Id.* at 14-15).

9 Plaintiff's fourth cause of action alleges that Defendant failed to furnish accurate itemized  
10 wage statements in violation of Labor Code § 226(a). (*Id.* at 15).

11 Plaintiff's fifth cause of action, asserted on behalf of Plaintiff and the "Sick Pay Class"  
12 (also referred to as "Underpaid PTO Class"), alleges that Defendant engaged in unfair business  
13 practice in violation of California Business and Professions Code §§ 17200 *et seq.* by failing to  
14 properly calculate and pay redeemed sick pay. (*Id.* at 16-17).

15 Plaintiff's sixth cause of action, asserted on behalf of Plaintiff and the "Former-Employee  
16 Sub-Class" alleges that Defendant engaged in unfair business practices by failing to pay all wages  
17 owed to employees upon cessation of employment in violation of Labor Code § 201. (*Id.* at 17-  
18 18).

19 Lastly, the amended complaint addresses class certification requirements under Federal  
20 Rule of Civil Procedure 23(a). (*Id.* at 9). The amended complaint contends that the members of  
21 each class are so numerous that joinder is impracticable; that class members can be ascertained  
22 using Defendant's own records; that Plaintiff and Plaintiff's counsel are adequate representatives  
23 for each of the proposed classes; that "common questions of fact and law predominate over any  
24 questions affecting only individual members of the class" regarding Defendant's policies and  
25 practices; and that Plaintiff's claims are typical of the proposed classes because Plaintiff was  
26 subject to the same policies and practices. (*Id.* at 9-10).

### 26 **III. DEFENDANT'S MOTION TO DISMISS**

27 Although not directly at issue, the Court's ruling on Defendant's Motion to Dismiss  
28 provides some relevant background for the present motion.

1 On April 10, 2023, Defendant filed a motion to dismiss and supporting memorandum,  
2 arguing that Plaintiff’s Fifth and Sixth Causes of Action, the class action causes, should be  
3 dismissed, or stayed in the alternative, “pursuant to the *Colorado River* doctrine and Federal Rule  
4 of Civil Procedure, Rule 12(b)(1), Rule 12(b)(3) and/or 12(b)(6) and based on the grounds that  
5 there are currently three state class actions involving the same allegations.” (ECF Nos. 9 at 1-2).  
6 Specifically, Defendant argued that under the *Colorado River* Doctrine, the Fifth and Sixth  
7 Causes of Action should be dismissed because the pending state court class action cases—  
8 *Moreno, Torres, and Mora*—addressed parallel issues. (ECF No. 10 at 13). Defendant argued  
9 that the *Colorado River* Doctrine factors supported dismissal and concluded that Mitchell’s class  
10 causes of action were redundant and already being asserted against it in multiple state court  
11 actions. (*Id.* at 15).

12 On January 26, 2024, United States District Judge Jennifer L. Thurston denied the motion.  
13 (*Id.*). Judge Thurston explained that “[t]he Ninth Circuit held that a partial stay of the federal  
14 action as to the state claims was inappropriate because ‘a *Colorado River* stay should be  
15 implemented only when the state proceeding *will resolve all of the parties’ claims.*’” (*Id.* at 4.)  
16 Judge Thurston pointed out that “Defendant does argue, nor could it, that the requested stay will  
17 resolve all the claims in this case.” (*Id.*). Judge Thurston also stated that “[u]pon learning of the  
18 state court action, Plaintiff took prompt steps to narrow the scope of her class claims to include  
19 only claims premised upon the failure to compensate employees properly for sick leave. This  
20 conduct is not clearly suggestive of forum shopping.” (*Id.* at 6).

#### 21 **IV. REQUEST FOR JUDICIAL NOTICE**

22 In its reply, Plaintiff asks that the Court take judicial notice of the Register of Actions  
23 from the consolidated case against Defendant, *Moreno v. United Health Centers of the San*  
24 *Joaquin Valley*, Superior Court of California, County of Fresno Case No. 22CECG01601 (“the  
25 State Court Action”). (ECF No. 54).

26 “The Court may judicially notice a fact that is not subject to reasonable dispute because it:  
27 (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and  
28 readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.  
Evid. 201(b). Courts “may take judicial notice of court filings and other matters of public

1 record.” *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). “But  
2 a court cannot take judicial notice of disputed facts contained in such public records.” *Khoja v.*  
3 *Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (citing *Lee v. City of Los Angeles*,  
4 250 F.3d 668, 689 (9th Cir. 2001)). “Just because the document itself is susceptible to judicial  
5 notice does not mean that every assertion of fact within that document is judicially noticeable for  
6 its truth.” *Khoja*, 899 F.3d at 999.

7 Here, Plaintiff is asking the Court to take notice of the State Court Action against  
8 Defendant. (See ECF No. 54). Defendant does not object to the Court taking judicial notice of  
9 the State Court Action against it.

10 Therefore, the undersigned will recommend granting Plaintiff’s request for judicial notice  
11 of the State Court Action.

## 12 **V. MOTION FOR CLASS CERTIFICATION**

### 13 **A. Plaintiff’s Motion**

14 Plaintiff seeks certification of the following proposed classes:

- 15 • **Underpaid PTO Class/Sick Pay Class:** “All current and former non-exempt  
16 California employees of UHSJ who were eligible for and used PTO/PTOU during  
17 a workweek when he/she also earned a bonus pursuant to Bonus Policy FN0040  
18 between July 17, 2018 and the date of certification (the ‘Underpaid PTO Class’).”  
(ECF No. 6-1 at 6).
- 19 • **Former Employee Sub-Class:** “All members of the Underpaid PTO Class whose  
20 employment ended at any time between July 17, 2019 and the date of certification  
21 (the ‘Former Employee Sub-Class’).” (*Id.*).

### 22 **B. Defendant’s Opposition**

23 On December 23, 2024, Defendant filed its opposition to Plaintiff’s motion for class  
24 certification. (ECF No. 50). Defendant argues that (1) proceeding on a class basis in this case is  
25 not superior to alternative means, such as the ongoing state court litigation in the *Moreno* case;  
26 (2) Plaintiff is not an adequate class representative because she does not know enough about the  
27 circumstances of other members of the class; and (3) certification of Plaintiff’s proposed classes  
28 has the potential to create injustice because (a) there is already a consolidated state court case

1 pending against Defendant, and (b) certifying this case and does not provide a substantial benefit  
2 to the class. (*Id.* at 8-14).

### 3 **C. Plaintiff's Reply**

4 Plaintiff's reply points out that Defendant did not dispute the numerosity, commonality, or  
5 typicality requirements. (ECF No. 53 at 4). Plaintiff argues that she is an adequate  
6 representative and does not need personal knowledge of how other class members were treated.  
7 (*Id.* at 7). Plaintiff also argues that Defendant's argument against superiority is founded on the  
8 erroneous assertions that a class action is not considered the superior method of adjudication for  
9 wage and hour claims and that proceeding as a class action in this case is unnecessary and  
10 potentially unjust because of the state court action. (*Id.* at 10). Plaintiff states that federal courts  
11 routinely recognize the superiority of class actions in wage and hour cases. (*Id.*). Plaintiff also  
12 states that the pending related state court litigation does not contain "sick leave" or "PTO" claims  
13 and remains uncertified after more than three years. (*Id.*).

## 14 **VI. LEGAL STANDARDS**

### 15 **A. Class Actions Generally**

16 For class certification, the proposed class must satisfy the four threshold requirements of  
17 Federal Rule of Civil Procedure 23(a):

- 18 (1) [T]he class is so numerous that joinder of all members is impracticable; (2)  
19 there are questions of law or fact common to the class; (3) the claims or defenses  
20 of the representative parties are typical of the claims or defenses of the class; and  
21 (4) the representative parties will fairly and adequately protect the interests of the  
22 class.

23 Fed. R. Civ. P. 23(a)(1)-(4). "Rule 23(a) ensures that the named plaintiffs are appropriate  
24 representatives of the class whose claims they wish to litigate." *Wal-Mart Stores, Inc. v. Dukes*,  
25 564 U.S. 338, 349 (2011). "The Rule's four requirements—numerosity, commonality, typicality,  
26 and adequate representation—effectively limit the class claims to those fairly encompassed by the  
27 named plaintiff's claims." *Id.* at 349 (internal quotation marks and citations omitted).

28 In addition to the requirements of Rule 23(a), "the proposed class must satisfy at least one  
of the requirements listed in Rule 23(b)." *Dukes*, 564 U.S. at 345. Pursuant to Rule 23(b)(3), a  
court may certify a class only if it determines that "questions of law or fact common to class  
members predominate over any questions affecting only individual members, and that a class

1 action is superior to other available methods for fairly and efficiently adjudicating the  
2 controversy.” Fed. R. Civ. P. 23(b)(3).

3 “A party seeking class certification must affirmatively demonstrate his compliance with  
4 [Rule 23].” *Dukes*, 564 U.S. at 350. The Supreme Court has recognized that “sometimes it may  
5 be necessary for the court to probe behind the pleadings before coming to rest in the certification  
6 question.” *Id.* (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160  
7 (1982)). Rule 23(b)(3) only “requires a showing that *questions* common to the class predominate,  
8 not that those questions will be answered, on the merits, in favor of the class.” *Amgen Inc. v.*  
9 *Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455, 459 (2013) (emphasis in original);  
10 *see also Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651,  
11 665 (9th Cir. 2022) (“[P]laintiffs must prove the facts necessary to carry the burden of  
12 establishing that the prerequisites of Rule 23(a) are satisfied by a preponderance of the  
13 evidence.”) (citing cases). However, “a district court *must* consider the merits if they overlap  
14 with the Rule 23(a) requirements.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir.  
15 2011).

## 16 **B. Rule 23(a) Requirements**

### 17 **1. Numerosity**

18 A proposed class must be “so numerous that joinder of all members is impracticable.”  
19 Fed. R. Civ. P. 23(a)(1). “The numerosity requirement requires examination of the specific facts  
20 of each case and imposes no absolute limitations.” *General Telephone Co. of the Northwest v.*  
21 *Equal Employment Opportunity Comm’n*, 446 U.S. 318, 330 (1980) (noting that a class with only  
22 15 members “would be too small to meet the numerosity requirement”). Courts in the Ninth  
23 Circuit have found the requirement satisfied when the class is composed of as few as thirty-nine  
24 members. *See Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 474 (E.D. Cal. 2010) (citing  
25 *Jordan v. L.A. County*, 669 F.2d 1311, 1319 (9th Cir. 1982) (noting that class sizes of thirty-nine,  
26 sixty-four, and seventy-one are sufficient to satisfy the numerosity requirement), *vacated on other*  
27 *grounds*, 459 U.S. 810, 103 (1982) (additional citations omitted)).

### 28 **2. Commonality**

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed.



1 R. Civ. P. 23(a)(2). Commonality does not require class members to “have all suffered a  
2 violation of the same provision of law.” *Dukes*, 564 U.S. at 350. A common question “must be  
3 of such a nature that it is capable of classwide resolution—which means that determination of its  
4 truth or falsity will resolve an issue that is central to the validity of each one of the claims in one  
5 stroke.” *Id.* “By contrast, an individual question is one where members of a proposed class will  
6 need to present evidence that varies from member to member.” *Olean*, 31 F.4th at 663 (*citing*  
7 *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)). “Commonality is necessarily  
8 established where there is a class-wide policy to which all class members are subjected.” *Owino*  
9 *v. CoreCivic, Inc.*, 60 F.4th 437, 444 (9th Cir. 2022) (*citing Parsons v. Ryan*, 754 F.3d 657, 678  
10 (9th Cir. 2014)). Further, “[e]ven a single common question of law or fact that resolves a central  
11 issue will be sufficient to satisfy this mandatory requirement for all class actions.” *Castillo v.*  
12 *Bank of Am., NA*, 980 F.3d 723, 728 (9th Cir. 2020) (*citing Dukes*, 564 U.S. at 350). “The  
13 commonality preconditions of Rule 23(a)(2) are less rigorous than the companion requirements of  
14 Rule 23(b)(3).” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on*  
15 *other grounds by Dukes*, 564 U.S. at 338. “Indeed, Rule 23(a)(2) has been construed  
16 permissively.” *Id.*

### 16 3. Typicality

17 “[T]he claims or defenses of the representative parties [must be] typical of the claims and  
18 defenses of the class.” Fed. R. Civ. P. 23(a)(3). They need not be clones; rather, all that is  
19 required is that the claims or defenses be “reasonably co-extensive.” *Hanlon*, 150 F.3d at 1020  
20 (noting that this standard is a “permissive” one and requires only that the claims of the class  
21 representatives be “reasonably co-extensive with those of absent class members; they need not be  
22 substantially identical.”). Typicality is satisfied if the representative’s claims arise from the same  
23 course of conduct as the class claims and are based on the same legal theory. *See, e.g., Kayes v.*  
24 *Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir. 1995) (claims are typical where named plaintiffs  
25 have the same claims as other members of the class and are not subject to unique defenses). “The  
26 test of typicality is whether other members have the same or similar injury, whether the action is  
27 based on conduct which is not unique to the named plaintiffs, and whether other class members  
28 have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497,

1 508 (9th Cir. 1992), *superseded by statute on other grounds as stated in Aquilina v. Certain*  
2 *Underwriters at Lloyd's London*, No. 1:18-CV-00496-ACK-KJM, 2021 WL 3611027, at \*6 (D.  
3 Haw. Aug. 13, 2021) (citation omitted).

#### 4 **4. Adequacy of Representation**

5 Before the Court can certify a class, the Court must be satisfied that “the representative  
6 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “[A]  
7 class representative must be part of the class and ‘possess the same interest and suffer the same  
8 injury’ as the class members.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-26 (1997)  
9 (citations omitted) (alteration in original). “The proper resolution of this issue requires that two  
10 questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest  
11 with other class members and (b) will the named plaintiffs and their counsel prosecute the action  
12 vigorously on behalf of the class?” *In re Mego Financial Corp. Securities Litigation*, 213 F.3d  
13 454, 462 (9th Cir. 2000), *as amended* (June 19, 2000) (citations omitted).

#### 14 **C. Rule 23(b) Requirements**

15 Plaintiff seeks certification under Rule 23(b)(3), which requires that “the questions of law  
16 or fact common to class members predominate over any questions affecting only individual  
17 members, and that a class action is superior to other available methods for fairly and efficiently  
18 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

#### 19 **1. Predominance**

20 First, questions of law or fact common to class members must predominate over any  
21 questions affecting only individual members. Fed. R. Civ. P. 23(b)(3). This “predominance  
22 inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by  
23 representation.” *Hanlon*, 150 F.3d at 1022 (quoting *Amchem*, 521 U.S. at 623) (internal quotation  
24 marks omitted). “This analysis presumes that the existence of common issues of fact or law have  
25 been established pursuant to Rule 23(a)(2); thus, the presence of commonality alone is not  
26 sufficient to fulfill Rule 23(b)(3).” *Id.* “In contrast to Rule 23(a)(2), Rule 23(b)(3) focuses on the  
27 relationship between the common and individual issues.” *Id.* As set forth by the Supreme Court,

28 The predominance inquiry asks whether the common, aggregation-enabling, issues  
in the case are more prevalent or important than the non-common, aggregation-  
defeating, individual issues. When one or more of the central issues in the action

1 are common to the class and can be said to predominate, the action may be  
2 considered proper under Rule 23(b)(3) even though other important matters will  
3 have to be tried separately, such as damages or some affirmative defenses peculiar  
4 to some individual class members.

*Tyson Foods*, 577 U.S. at 453 (internal citations and quotation marks omitted).

## 5 **2. Superiority**

6 Rule 23(b)(3) provides that, aside from predominance, a court must find that a “class  
7 action is superior to other available methods for fairly and efficiently adjudicating the  
8 controversy.” Fed. R. Civ. P. 23(b)(3). The rule lists four metrics pertinent to superiority:

9 (A) the class members’ interests in individually controlling the prosecution or  
10 defense of separate actions;

11 (B) the extent and nature of any litigation concerning the controversy already  
12 begun by or against class members;

13 (C) the desirability or undesirability of concentrating the litigation of the claims in  
14 the particular forum; and

15 (D) the likely difficulties in managing a class action.

16 *Id.* The Ninth Circuit has recognized a “well-settled presumption that courts should not refuse to  
17 certify a class merely on the basis of manageability concerns,” but rather should look to  
18 “manageability as one component of the superiority inquiry.” *Briseno v. ConAgra Foods, Inc.*,  
19 844 F.3d 1121, 1128 (9th Cir. 2017) (quoting *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 663  
20 (7th Cir. 2015)) (internal quotation marks omitted).

## 21 **IV. CLASS CERTIFICATION ANALYSIS**

### 22 **A. Summary of the Parties’ Positions**

#### 23 **1. Plaintiff’s Motion for Class Certification**

24 Plaintiff argues that her motion for class certification should be granted because the  
25 Underpaid PTO Class and Former Employee Sub-class meet all the requirements under Rule  
26 23(a)(1)-(4) and 23(b)(3). (ECF No. 46 at 2).

27 Plaintiff attaches a memorandum to support her motion. (ECF No. 46-1). Plaintiff’s  
28 memorandum defines the Underpaid PTO Class and Former Employee Sub-Classes as:  
All current and former non-exempt California employees of UHSJ who were  
eligible for and used PTO/PTOU during a workweek when he/she also earned a  
bonus pursuant to Bonus Policy FN0040 between July 17, 2018 and the date of  
certification (the “Underpaid PTO Class”); and

1 All members of the Underpaid PTO Class whose employment ended at any time  
2 between July 17, 2019 and the date of certification (the “Former Employee Sub-  
Class”).

3 (*Id.* at 6 (footnote omitted)). Plaintiff asserts that “[t]he Underpaid PTO Class consists of well  
4 over 1,000 individuals and asserts a single claim for underpayment of redeemed PTO/PTOU,  
5 which arises out of UHSJ’s admittedly common practice of not including a particular quarterly  
6 incentive bonus (the ‘FN0400 Bonus’) when calculating the rate employees are compensated for  
7 redeemed PTO.” (*Id.* (emphasis omitted)). Plaintiff further asserts that the Former Employee  
8 Sub-class “asserts a lone derivative cause of action for waiting time penalties because of the  
9 underpaid redeemed PTO during employment.” (*Id.*).

10 Plaintiff alleges as follows: “UHSJ had one (1) overarching written bonus policy, which it  
11 dubbed ‘FN0040-Bonus Policy’, that applied to all members of the Underpaid PTO Class from at  
12 least July 27, 2017 forward.” (*Id.* at 7). “Plaintiff learned of UHSJ’s quarterly bonus program  
13 shortly after she was hired—it was explained that anytime a certain number of encounters was  
14 met companywide, she (and “everyone”) would qualify for a bonus.” (*Id.* at 7-8). “Through the  
15 entire proposed Class Period, from July 17, 2018 forward, UHSJ has had uniform written policies  
16 applicable to all Underpaid PTO Class members that govern how the Company satisfies its  
17 obligations under California’s Healthy Workplaces, Healthy Families Act (Labor Code § 245, et  
18 seq.). In particular, UHSJ provides designated ‘Paid Sick Leave’ for per diem and non-benefit-  
19 earning part-time employees.” (*Id.* at 8). “The PTO program provides employees a consolidated  
20 and unsegregated ‘bank’ of time off that can be used for ‘vacation, sick leave, medical  
appointments, family illness or any leave of absence.’” (*Id.*).

21 Plaintiff states that “[d]uring the proposed Class Period, UHSJ always paid redeemed  
22 PTO—regardless of the reason the PTO is used—at the employee’s base hourly rate of pay.” (*Id.*  
23 at 9). “At no point were FN0400 Bonus earnings factored into the rate at which UHSJ paid its  
24 employees for redeemed PTO.” (*Id.*). Additionally, “UHSJ never made any retroactive attempt  
25 to incorporate FN0400 Bonuses into redeemed PTO at the time Mitchell, or any other California  
26 employee, separated from employment and UHSJ was calculating the amount to pay for his/her  
27 final wages.” (*Id.*). Plaintiff’s position is that because the bonuses were non-discretionary and  
28 applied uniformly, they should have been included in her compensation. (*Id.* at 10). Plaintiff

1 asserts that “[s]ince UHSJ never went back, at the time it was calculating Plaintiff’s final wages,  
2 and retroactively increased the amount it paid Plaintiff for PTO redeemed during employment,  
3 the underpaid PTO remained outstanding at the time of separation—it still remains outstanding  
4 today.” (*Id.* at 10). Plaintiff further asserts that “[t]he failure to ever pay redeemed PTO at a rate  
5 that included FN0400 Bonuses during employment, coupled with the failure to retroactively pay  
6 such amounts at Plaintiff’s separation underscores the waiting time penalty claim on behalf of the  
7 Former Employee Sub-Class.” (*Id.*).

8 In her analysis section, Plaintiff argues that the Underpaid PTO Class and Former  
9 Employee Sub-Class should be certified because all Rule 23 requirements have been met. (*Id.* at  
10 11). First, Plaintiff asserts that the Underpaid PTO Class and Former Employee Sub-Class are  
11 sufficiently numerous, and that the numerosity is confirmed by Defendant’s discovery responses.  
12 (*Id.*).

13 Second, Plaintiff asserts that commonality is established because the claims of the  
14 Underpaid PTO Class and Former Employee Sub-Class present the following common issues:

15 (1) whether the bonuses issued under policy FN0040 are non-discretionary and/or  
16 otherwise includable in the “regular rate of pay”; (2) whether PTO/PTOU must be  
17 paid at the “regular rate of pay” under California law; (3) whether UHSJ’s practice  
18 of paying PTO/PTOU at the employee’s base hourly rate is unlawful; (4) whether  
19 Underpaid PTO Class members are entitled to restitutionary relief in the form of  
20 underpaid PTO/PTOU wages; and (5) whether UHSJ’s failures to pay PTO/PTOU  
21 at the “regular rate of pay” were willful under Labor Code section 203.

22 (*Id.* at 12-13). Third, Plaintiff argues that her claims are typical of Underpaid PTO Class and  
23 Former Employee Sub-Class because “her damages are typical of and entirely coextensive with  
24 *all* members of the Underpaid PTO Class and the Former Employee Sub-Class and arise *directly*  
25 out of UHSJ’s common practices outlined in the preceding Section.” (*Id.* at 16). Fourth, Plaintiff  
26 states that she is an adequate class representative because she and her counsel “(1) will prosecute  
the action vigorously on behalf of the class, and (2) do not have conflicts of interest with other  
class members.” (*Id.* at 17). Fifth, Plaintiff argues that, although not specifically identified in  
Rule 23, the proposed classes must be “ascertainable” and, in this case, the proposed class and  
sub-class are both identifiable and ascertainable. (*Id.* at 18).<sup>4</sup>

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27 <sup>4</sup> “While some circuits have adopted an ‘ascertainability’ prerequisite to certification, the Ninth Circuit  
28 has not.” *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 682 n.8 (C.D. Cal. 2020) (citing *Briseno v. ConAgra*  
*Foods, Inc.*, 844 F.3d 1121, 1124 n.4 (Jan. 3, 2017)). Therefore, the Court determines that it need not

1           Lastly, Plaintiff argues that the Rule 23(b)(3) requirements have also been met. (*Id.* at  
2 19). Plaintiff contends predominance is satisfied because “the primary questions central to  
3 resolution of the claims here are common to all Class members.” (*Id.* at 20 (emphasis omitted)).  
4 Plaintiff further states that these common questions are: (1) “whether the FN0400 Bonuses are  
5 includable in the ‘regular rate of pay’”; (2) “whether UHSJ was required to pay redeemed PTO at  
6 the regular rate of pay”; and (3) “whether the failure to pay redeemed PTO at the regular rate of  
7 pay during employment resulted in willful failure to pay all wages due at the time of separation  
8 are the fundamental common questions underlying this litigation and the class-wide claims  
9 asserted.” (*Id.*).

10           As to superiority, Plaintiff asserts that a class action is the superior method for  
11 adjudication because the claims are based on uniform practices that can be efficiently litigated on  
12 a class-wide basis, and “no single class member can reasonably be said to have suffered  
13 substantially different damages or to have an emotional stake in the litigation that would motivate  
14 a desire to individually control prosecution of a separate action.” (*Id.* at 23). Plaintiff also  
15 contends that a class-wide trial would be manageable because, “the parties can file cross-motions  
16 for summary judgment to decide dispositive legal issues pertaining to Defendant’s liability.” (*Id.*  
17 at 25).

## 18                           **2. Defendant’s Opposition**

19           Defendant’s Opposition states that “[d]uring her employment at UHC Plaintiff only  
20 worked in the UHC Administration buildings in the Finance Department. . . . [c]onsequently,  
21 Plaintiff would not have knowledge, information, or awareness of how any of the clinic sites  
22 operated and/or how the employees at those 35+ sites were eligible, entitled or compensated for  
23 bonuses.” (ECF No. 50 at 6 (emphasis omitted)). “Likewise, Plaintiff did not take the  
24 opportunity to communicate or interact with UHC personnel at any of the numerous UHC clinic  
25 sites with regard to bonuses, regular rate issues, or any other issue at stake in this litigation.” (*Id.*  
26 at 6-7).

27           Defendant further states that “[Plaintiff] did not have any job responsibilities that were in  
28 any way related to or connected with any UHC bonus program or policy, nor would she have any

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address whether the class is ascertainable.

1 access to information about any bonus program other than any memo or documents published to  
2 all employees.” (*Id.* at 7). “Further, Plaintiff’s job duties did not include any work connected  
3 with payroll information, timekeeping or reporting issues, interfacing with human resources or  
4 payroll personnel, discussions of personnel policies or wage and hour policies, overtime, sick pay,  
5 payroll calculations, overtime calculations or any wage and hour issues.” (*Id.*). Defendant also  
6 states that “[Plaintiff] left in 2022 so would have no information about these issues for the  
7 employees in the 13 sites that have since opened and the employees hired to work at those sites.”  
8 (*Id.* at 8). “She also admits having not ever spoken to any UHC employee regarding how they  
9 were used or paid their sick pay, or how their sick pay was calculated.”

10 Defendant states that there are three other pending class actions against United Health  
11 Centers of the San Joaquin Valley: (1) *Lupita Moreno v. United Health Centers of the San*  
12 *Joaquin Valley*, Fresno County Superior Court No. 22CECG01601.3; (2) *Mirella Torres v.*  
13 *United Health Centers of the San Joaquin Valley*, Fresno County Superior Court No.  
14 22CECG01760.4; (3) *Adriana Mora v. United Health Centers of the San Joaquin Valley*, Fresno  
15 County Superior Court No. 23CECG00030. (*Id.* at 9). Defendant states that “[t]hese cases have  
16 now been consolidated with the *Moreno* action as the lead case.” (*Id.* at 10). Defendant further  
17 states that because the class periods in all three cases are larger, Plaintiff’s case should be  
18 consolidated with the *Moreno* case. (*Id.*).

19 Defendant also specifies that “[b]oth *Moreno* and *Mora* have the same cause of action [as  
20 the Underpaid PTO Class.]” Specifically, those cases state:

21 Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,  
22 unlawful, and harmful to Plaintiff, other Class members, and to the general public.  
23 Plaintiff seeks to enforce important rights affecting the public interest within the  
24 meaning of Code of Civil Procedure § 1021.5. **Defendants’ activities, as alleged  
herein, are violations of California law, and constitute unlawful business acts  
and practices in violation of California Business & Professions Code §§ 17200,  
et seq.**

25 (*Id.* at 10 (citing *Moreno* Complaint at 19:23-20:1)). Defendant argues that “the  
26 references to proper compensation and other benefits necessarily must include any and all  
27 sick pay owed to the employees (as referenced by Plaintiff).” (*Id.*). Regarding the Former  
28 Employee Sub-Class, Defendant argues that “[a]ll three state court complaints make

1 similar claims, actually focusing in detail on the statutes in question, Labor Code §§ 201-  
2 203.” (*Id.* at 11).

3 Defendant also makes the following other arguments: (1) in federal courts, a class  
4 action is not considered superior to alternative means; (2) Plaintiff is not an adequate  
5 representative because she does not know enough about the claims, status, or interests of  
6 other members of the class; and (3) certification of Plaintiff’s proposed classes has the  
7 potential to create injustice because of the ongoing related state court litigation; and (4)  
8 certification would not provide a substantial benefit to the class that is not addressed in the  
9 ongoing state court litigation. (ECF No. 50).

### 10 **3. Plaintiff’s Reply**

11 In reply, Plaintiff points out that Defendant did not dispute the numerosity, commonality,  
12 or typicality requirements. (ECF No. 53 at 4). Plaintiff argues that she is an adequate  
13 representative and does not need personal knowledge of how other Class Members were treated.  
14 (*Id.* at 7). Plaintiff also argues that Defendant’s argument against superiority is founded on the  
15 erroneous assertions that: (1) a class action is not considered the superior method of adjudication  
16 for wage and hour claims, and (2) proceeding as a class action in this case is unnecessary and  
17 potentially unjust because of the state court action. (*Id.* at 10). Plaintiff further argues that  
18 federal courts routinely recognize the superiority of class actions in wage and hour cases, and that  
19 the none of the pending related state court litigation contains “sick leave” or “PTO” claims.  
20 Plaintiff also says that those state court cases remain uncertified after more than three years of  
litigation. (*Id.*).

### 21 **B. Rule 23(a) Requirements**

#### 22 **1. Numerosity**

23 Plaintiff indicates that there are likely more than 900 members of the Unpaid PTO class  
24 based on Defendant’s responses to discovery requests. (ECF No. 46-1 at 11; *see also* ECF No.  
25 46-3 at 14; ECF No. 46-3 at 80). Plaintiff also indicates that “[t]he Former Employee Sub-Class  
26 is believed to consist of *at least* 1/3 of those individuals” in the Former Employee Sub-Class.”<sup>5</sup>

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27 <sup>5</sup> In a different section of the brief, Plaintiff indicates that “it is expected at least 300 individuals meet [the]  
28 definition” for the Former Employee Sub-Class. (ECF No. 46-1 at 22).



1 (ECF No. 46-1 at 12). Defendant does not dispute these numbers. (*See* ECF No. 50). These  
2 figures are sufficiently numerous that joinder of all class members is impracticable. Accordingly,  
3 the Court finds that the numerosity requirement has been met.

## 4 **2. Commonality**

5 Plaintiff states that the common question to be answered among the Underpaid PTO class  
6 and Former Employee Sub-Class are as follows:

7 (1) whether the bonuses issued under policy FN0040 are non-discretionary and/or  
8 otherwise includable in the ‘regular rate of pay’; (2) whether PTO/PTOU must be  
9 paid at the ‘regular rate of pay’ under California law; (3) whether UHSJ’s practice  
10 of paying PTO/PTOU at the employee’s base hourly rate is unlawful; (4) whether  
Underpaid PTO Class members are entitled to restitutionary relief in the form of  
underpaid PTO/PTOU wages; and (5) whether UHSJ’s failures to pay PTO/PTOU  
at the ‘regular rate of pay’ were willful under Labor Code section 203.

11 (ECF No. 46-1 at 12-13).

12 Plaintiff argues that “[i]t is readily recognized that the question of the discretionary versus  
13 nondiscretionary nature of a bonus is a certifiable common question, particularly with respect to a  
14 bonus uniformly applied to all class members.” (*Id.* at 13 (citations omitted)). Plaintiff states that  
15 “[Defendant’s] FN0400 Bonus policy [was] the ‘only’ written bonus policy in place . . . during  
16 the relevant period and it applied to ‘all employees.’” (*Id.*). Plaintiff argues that because the  
17 bonus policy applied a uniform method of characterizing and calculating bonuses to all  
18 employees, “the central question of whether the FN0400 Bonus is includable in the ‘regular rate  
19 of pay’, or whether UHSJ can satisfy its burden of demonstrating the payments are discretionary  
or otherwise excludable, is a common one.” (*Id.* at 14).

20 Plaintiff also argues that for the same reason, “determination of whether PTO/PTOU must  
21 be paid at the ‘regular rate of pay’ is also a common question.” (*Id.*). Plaintiff further argues that  
22 “the lone claim asserted on behalf of the Former Employee Sub-Class is similarly based on a  
23 common contention; namely, that UHSJ’s failure to include FN0400 Bonuses in the rate class  
24 members were paid for redeemed PTO during employment resulted in unpaid wages that  
25 remained outstanding at separation and still have not been paid thus entitling separated employees  
26 to waiting time penalties.” (*Id.* at 15 (emphasis omitted)).

27 Defendant does not challenge the commonality of these questions. (*See generally* ECF  
28 No. 50).

1 Several courts within the Ninth Circuit have found that the discretionary versus non-  
2 discretionary nature of bonuses is a certifiable common question of law. *See e.g. Kincaid v.*  
3 *Educ. Credit Mngmt. Corp., Inc.*, No.2:21-cv-00863, 2024 U.S. Dist. LEXIS 59023, at \*3 (E.D.  
4 Cal. Mar. 29, 2024) (certifying class for “[a]ll members of the Class who received non-  
5 discretionary bonuses, commissions, and/or incentives which were not included in the regular rate  
6 of pay for purposes of overtime compensation); *see also Chavez v. Lumber Liquidators, Inc.*, No.  
7 CV-09-4812-SC, 2012 U.S. Dist. LEXIS 40984, at \*6 (N.D. Cal. Mar. 26, 2012) (holding  
8 employees show commonality and predominance if their employer had a uniform practice or  
9 policy for calculating overtime pay that did not include bonuses or other non-discretionary pay).

10 Additionally, Labor Code section 246(l)(1)-(2) provides:

11 (1) Paid sick time for nonexempt employees shall be calculated in the same manner  
12 as the regular rate of pay for the workweek in which the employee uses paid sick  
13 time, whether or not the employee actually works overtime in that workweek.

14 (2) Paid sick time for nonexempt employees shall be calculated by dividing the  
15 employee’s total wages, not including overtime premium pay, by the employee’s  
16 total hours worked in the full pay periods of the prior 90 days of employment.

17 Cal. Lab. Code, § 246(l)(1)-(2).

18 Labor Code section 203(a) provides:

19 (a) If an employer willfully fails to pay, without abatement or reduction, in  
20 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an  
21 employee who is discharged or who quits, the wages of the employee shall continue  
22 as a penalty from the due date thereof at the same rate until paid or until an action  
23 therefor is commenced; but the wages shall not continue for more than 30 days. An  
24 employee who secretes or absents himself or herself to avoid payment to him or her,  
25 or who refuses to receive the payment when fully tendered to him or her, including  
26 any penalty then accrued under this section, is not entitled to any benefit under this  
27 section for the time during which he or she so avoids payment.

28 Cal. Lab. Code, § 203(a).

Plaintiff presents several excerpts from depositions with Choua Xiong-Fajardo, Director  
of Finance for UHSJ, as evidence that Defendant had a practice of paying employees redeemed  
PTO at their base hourly rate:

Q. Okay. Do you know anywhere within UHC's paid sick leave or PTO policies, is  
it indicated what rate paid sick leave or PTO is to be paid at?

A. We -- I'm assuming it's in the I don't know where in the employee manual it is,

1 but it is paid at their hourly rate.

2 Q. When you say at their hourly rate, what does that mean?

3 A. Whatever that was their current pay.

4 Q. Like their base hourly rate?

5 A. Yes, for hourly. And then for exempt, it would be, you know, it would just be  
6 their salary.

7 Q. The conversion of their salary into an hourly rate?

8 A. Correct.

9 Q. The hourly equivalent based on the salary?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes. Correct.

13  
14 (*Id.* at 83). Plaintiff also submits the following additional excerpt from the same deposition with  
15 Xiong-Fajardo:

16 Q. Okay. Is it your understanding that PTO and paid sick leave are always paid out  
17 at the, for hourly employees, the employee's base hourly rate?

18 A. Yes.

19 Q. Do you know, is it calculated any differently, the rate that's it's paid, based on  
20 the reason the PTO is used?

21 A. No, not that I'm aware.

22 Q. And you oversee payroll to ensure that employees are paid accurately, right?

23 A. Yes, that's correct.

24 (*Id.* at 75).

25 Plaintiff also presents evidence that at no point were FN0400 Bonus earnings factored into  
26 the rate UHSJ employees for redeemed PTO:

27 Q. Are you aware of bonus earnings being, quarterly bonus earnings being  
28 factored into the PTO rate, or PTOU rate, paid to any employee at UHC at any  
time?

1 A. No.  
2  
3 (*Id.* at 78).

4 Plaintiff's evidence indicates that Defendant has a uniform policy in place for paying  
5 hourly employees PTO at their base hourly rate. Plaintiff's evidence also indicates that bonuses  
6 were not factored into the employees' PTO or PTOU rates. Defendant does not dispute that these  
7 practices were in place during the relevant period, nor does Defendant dispute that Plaintiff can  
8 establish commonality as to the Underpaid PTO Class or Former Employee Sub-class.

9 Accordingly, the Court concludes that commonality has been established for this class.

### 10 **3. Typicality**

11 Plaintiff argues that (1) her "claims and the nature of her damages are typical of and  
12 entirely coextensive with all members of the Underpaid PTO Class and the Former Employee  
13 Sub-Class and arise directly out of UHSJ's common practices outlined in the preceding section";  
14 (2) "like all Underpaid PTO Class members, earned FN0400 Bonuses during periods when she  
15 redeemed PTO and was compensated for that PTO time at only her base hourly rate;" (3)  
16 "Plaintiff no longer works for UHSJ, she possesses the *identical* claim for waiting time penalties  
17 founded on the failure to properly pay redeemed PTO during employment available to other  
18 Former Employee Sub-Class members." (ECF No. 46-1 at 16 (emphasis omitted)). Defendant  
19 does not contest typicality of the class and sub-class claims. (*See generally* ECF No. 50).

20 As evidence of typicality, Plaintiff provides the following Deposition testimony:

21 Q. You see that that is a wage statement relating to the pay period, March 1st, 2022,  
22 to March 15th, 2022, for Ms. Mitchell?

23 A. Yes. Correct.

24 Q. And you see that she used PTOU here, right?

25 A. Uh-huh.

26 Q. Yes?

27 A. Yes. Correct. Sorry.

28 Q. That's okay. And it looks like the PTOU was paid at \$24.93, right?

A. Yes, that's correct.

1  
2 Q. Okay. And that's the same amount that was paid for Ms. Mitchell's hourly – I'm  
3 sorry, earnings designated as, quote, "regular," right?

4  
5 A. Yes, that's correct.

6  
7 Q. Okay. And it looks like, under her name, where it says "hourly, 24.93," that is  
8 her base hourly rate, correct?

9  
10 A. Yes, that's correct.

11  
12 Q. And this PTOU that was paid, it doesn't include any amounts that Ms. Mitchell  
13 may have earned during this period for any bonuses, right?

14  
15 A. Yes, that's correct.

16  
17 Q. And just to – do you know if this PTOU that was paid to Ms. Mitchell for this  
18 period of time on UHC-Class 000959, do you know what that PTOU was used  
19 for?

20  
21 A. From the top of my head, no. I'm assuming she called in sick.

22  
23 Q. Okay. And that could be confirmed by looking at her time records and the notes?

24  
25 A. Yeah, if there was any notes.

26  
27 Q. Okay.

28  
29 A. This just tells me it's unscheduled. She might not be sick, but she could have had  
30 an emergency or something.

31  
32 Q. Okay. Well, let's look at Exhibit 6, for that time period, real quick.

33  
34 ...

35  
36 Q. It looks like March 11th and March 15th both indicate PTOU being used, and the  
37 notes reflect that they were for "sick," right?

38  
39 A. Yes. Correct.

40  
41 ...

42  
43 Q. Okay. And again, you told me this already, but the bonus earnings Ms. Mitchell  
44 had was in no way factored into the rate that was she paid for that PTOU that was  
45 redeemed, right?

46  
47 A. Yes, that's correct.

1 Q. Are you aware of bonus earnings being, quarterly bonus earnings being factored  
2 into the PTO rate, or PTOU rate, paid to any employee at UHC at any time?

3 A. No.

4 (ECF No. 46-3 at 75-78).

5 As the Ninth Circuit has explained, “[t]he test for typicality refers to the nature of the  
6 claim or defense of the class representative, and not to the specific facts from which it arose or the  
7 relief sought.” *Jones v. Shalala*, 64 F.3d 510, 514 (9th Cir. 1995) (citing *Hanon*, 976 F.2d at  
8 508). The claims of the Underpaid PTO Class stem from Defendant’s alleged underpayment of  
9 sick pay. Plaintiff, a former non-exempt employee of Defendant’s staff accountant’s office, has  
10 offered evidence establishing the existence of this practice, which applied to all Defendant’s  
11 employees—including non-exempt employees. As a former non-exempt employee, Plaintiff  
12 would have been subject to the same policies.

13 Defendant’s opposition offers no arguments against typicality. Specifically, Defendant’s  
14 opposition does not dispute that Plaintiff was subject to these policies.

15 As Plaintiff has presented evidence that she was subject to the same policy resulting in the  
16 underpayment of sick pay wages, the Court concludes that Plaintiff’s claims are typical of those  
17 of the Underpaid PTO Class and Former Employee Sub-Class.

#### 18 **4. Adequacy of Representation**

19 As an initial matter, Defendant does not challenge the adequacy of Plaintiff’s counsel.  
20 The declarations provided by Plaintiff’s counsel indicate that there are no conflicts of interest  
21 preventing Mitchell’s counsel from representing her and the other members of the proposed class.  
22 (ECF No. 50 at 17; ECF No. 46-3 at 5). The named counsel has substantial experience in  
23 employment class, collective and representative actions and both have and are willing to dedicate  
24 the necessary effort and resources to effectively represent the Class. (ECF No. 46-1 at 18; ECF  
25 No. 46-3 at 5-10). The Court is satisfied that Plaintiff’s counsel is adequate.

26 As to Plaintiff’s adequacy as a class representative, Plaintiff argues that she (1) has no  
27 conflicts of interest; (2) “[a]lthough Plaintiff also had a separate lawsuit against UHSJ that  
28 asserted claims arising under California’s Fair Employment & Housing Act (“FEHA”), such does  
not create a conflict or negatively impact her adequacy”; (3) “Plaintiff’s commitment to the

1 Classes is underscored by the fact she continues to vigorously pursue the class claims *after* she  
2 fully resolved her separate individual FEHA matter”; (4) “Plaintiff has further demonstrated her  
3 commitment to the Class by actively participating throughout the lawsuit, including submitting  
4 herself to deposition in furtherance of the Class’ interests;” (5) “She has functional knowledge  
5 and familiarity with the legal and factual bases of the claims and understands her duties and  
6 obligations in serving as class representative.” (ECF No. 46-1 at 17-18).

7 Defendant argues that Plaintiff is not an adequate representative because:

- 8 (1) She “knows remarkably little about the claims, status or interests in the other class  
9 members. During her employment at UHC Plaintiff *only* worked in the UHC  
10 Administration buildings in the Finance Department and not at the 22 clinic sites that  
11 existed at the time of her termination or the 13 sites opened since.” (ECF No. 50 at  
12 13).
- 13 (2) Plaintiff “simply does not have knowledge, information, or awareness of how any of  
14 the clinic sites operated and/or how the employees at those 35+ sites were eligible,  
15 entitled or compensated for bonuses.” (*Id.*).
- 16 (3) “Plaintiff did not take the opportunity to communicate or interact with UHC personnel  
17 at any of the numerous UHC clinic sites with regard to bonuses, regular rate issues, or  
18 any other issue at stake in this litigation.” (*Id.*).
- 19 (4) “Further, Plaintiff’s job duties did not include any work connected with payroll  
20 information, timekeeping or reporting issues, interfacing with human resources or  
21 payroll personnel, discussions of personnel policies or wage and hour policies,  
22 overtime, sick pay, payroll calculations, overtime calculations or any wage and hour  
23 issues. . . . Instead, she focused on daily deposits, received and paid invoices and,  
24 later, employee expense reimbursements. (*Id.*).
- 25 (5) “Plaintiff also did not have access or information regarding bonus calculations,  
26 entitlement to bonuses, bonus eligibility, the definition of any terms in the bonus  
27 programs or policies, discretionary status of bonuses, or any other bonus features  
28 except as published and available to all UHC employees.” (*Id.* at 14).
- (6) “To the extent Plaintiff was paid or entitled to any bonuses based on any bonus

1 program or policy, her position fell into the category of ‘Administration.’ . . . As a  
2 result, she had no access or information as to how the Administration category or any  
3 other categorization would have been defined for purposes or bonus eligibility,  
4 entitlement, calculation or payment, except as published to all employees.” (*Id.*).

5 (7) “Plaintiff concedes she does not having any personal knowledge about how regular  
6 rate issues impacted any other employee besides her.” (*Id.*).

7 (8) “She also admits having *never* spoken to any UHC employee regarding how they were  
8 used or paid their sick pay, or how their sick pay was calculated.” (*Id.*).

9 (9) “Plaintiff admits she did not receive bonuses during the ‘two years during COVID’  
10 and further admits never having been guaranteed a bonus at UHC, and was never  
11 made to believe that bonuses were a regular addition to her compensation.” (ECF No.  
12 50 at 15).

13 In her reply, Plaintiff argues that her lack of personal knowledge of other class members’  
14 experiences does not render her an inadequate representative because “there is no requirement  
15 that a named plaintiff possess personal knowledge of the experiences of other class members in  
16 order to maintain a class action.” (ECF No. 53 at 7). Instead, Plaintiff argues that “the function of  
17 the adequacy requirement is simply to protect the due process interests of absent class members  
18 by ensuring there are no conflicts and the named plaintiff is capable of (and willing to) pursuing  
19 and protecting their rights.” (*Id.*). Plaintiff also argues that she has “affirmatively demonstrated  
20 she has no conflicts with [the other class members] and has a functional knowledge of the nature  
21 of the claims and her role as class representative; [which] is all that is necessary to underscore  
22 certification.” (*Id.*). Plaintiff also points out that “Defendant cites absolutely no legal authority  
23 suggesting a class representative must have personal knowledge of how other individuals were  
24 treated in order to be adequate. This is because no such requirement exists.” (*Id.*).

25 After consideration, the Court is satisfied that Plaintiff is an adequate representative for  
26 the Underpaid PTO Class and Former Employee Sub-Class. As to the first inquiry under *Mego*  
27 regarding conflicts of interest, both Plaintiff and her counsel represent that they have no conflicts  
28 of interest in pursuing this litigation. (ECF No. 46-1 at 17; ECF No. 46-3 at 5). In her  
declaration, Plaintiff also represents that she understands and agrees to represent the interests of



1 the other Class Members who, like her, earned quarterly bonuses during periods when PTO was  
2 redeemed but were only paid PTO at the base hourly rate, and Defendant does not contend  
3 otherwise. (ECF No. 46-2 at 3). As to the second question under *Mego*, Plaintiff has also  
4 declared that she is “committed to actively pursu[ing] the claims” on behalf of the Underpaid  
5 PTO Class and Former Employee Sub-Class. (*Id.*). Defendant does not contest these assertions.  
6 (*See generally* ECF No. 50).

7 As to Plaintiff’s previous claims against Defendant, Plaintiff states that she “specifically  
8 did not waive any of the claims pending in this class action when [she] settled [her] individual  
9 wrongful termination/discrimination claims.” (*Id.*). Defendant also does not contest this  
10 assertion. (*See generally* ECF No. 50).

11 Additionally, the Court agrees that Plaintiff is not required to have personal knowledge of  
12 the circumstances and experiences of other class members. As the Supreme Court has stated,  
13 Rule 23(a)(4) “serves to uncover conflicts of interest between named parties and the class they  
14 seek to represent.” *Amchem Prods. v. Windsor*, 521 U.S. 591, 597 (1997). Nothing about the rule  
15 addresses the knowledge of the Plaintiff. Furthermore, other courts in this circuit have also found  
16 that a plaintiff “need not have personal knowledge of other class members’ experiences, and her  
17 lack of such knowledge does not create a conflict or raise doubts about her ability to vigorously  
18 pursue the action on behalf of the class.” *Pace v. PetSmart Inc.*, No. Case No. SACV 13-00500  
19 DOC (RNBx), 2014 U.S. Dist. LEXIS 77727, at \*20 (C.D. Cal. June 3, 2014); *Delagarza v.*  
20 *Tesoro Ref. & Mktg. Co.*, C-09-5803 EMC, 2011 U.S. Dist. LEXIS 101127, at \*28 (N.D. Cal.  
21 Sept. 8, 2011) (“That class representatives do not have personal knowledge of the experiences of  
22 each of their fellow class members says nothing about the rule’s chief concern.”).

23 Defendant cites no case law to support its assertion that Plaintiff needed to have  
24 knowledge of the experience of other members of the class. The Court will not impose such a  
25 requirement for Rule 23(a)(4) where one does not exist.

26 Accordingly, the Court finds that Plaintiff and Plaintiff’s counsel are adequate  
27 representatives for the Underpaid PTO Class and Former Employee Sub-Class.

28 \\\

\\

1                   **C. Rule 23(b) Requirements**

2                   As the Court has concluded that Plaintiff has satisfied all the requirements under Rule  
3 23(a) for the Underpaid PTO Class, the Court now examines the requirements under Rule  
4 23(b)(3).

5                   **1. Predominance**

6                   As to predominance, Plaintiff first states that her “position is that the FN0400 Bonuses are  
7 includable in the ‘regular rate of pay’ and that compliance with the HWHFA required UHSJ to  
8 pay all redeemed PTO at the ‘regular rate of pay’ since UHSJ does not distinguish between the  
9 reasons PTO is being redeemed and expressly intended its PTO plan to comply with ‘PSL state  
10 law[.]’” (ECF No. 46-1 at 20-21). Plaintiff essentially argues that because these policies were  
11 applied to all class members, the requirement for predominance has been met. (*Id.* at 21).

12 Plaintiff also states that:

13                   there is no dispute that 1) FN0400 Bonuses were afforded to “all employees” during  
14 the Class Period pursuant to the same written policies, 2) that PTO was provided to  
15 all employees in the same way pursuant to written policies that applied company-  
16 wide, 3) that PTO was (and is) *always* paid at the base hourly rate and never included  
FN0400 Bonus amounts, and 4) that UHSJ never went back and retroactively  
incorporated FN0400 Bonus amounts into PTO and provided employees “back  
wages.”

17 (ECF No. 46-1 at 21). Defendant does not dispute that Plaintiff has satisfied the  
18 predominance requirement as to the Underpaid PTO Class.

19                   Plaintiff has established that during the relevant period, Defendant always paid employees  
20 PTO at a base hourly rate. (ECF 46-1 at 75, 83). Plaintiff also submits evidence to show that  
21 there was one policy in place. (*Id.* at 46).

22                   As a uniform policy was applied to all members of the Underpaid PTO Class and Former  
23 Employee Sub-Class, the Court finds that the Class is sufficiently cohesive, even if an individual  
24 member’s damages will vary depending on the amount of premium pay they are owed.

25                   Accordingly, the Court finds that predominance has been established for the Underpaid  
26 PTO Class and Former Employee Sub-Class.

27                   **2. Superiority**

28                   Plaintiff argues that a class action is the superior method for resolving the claims of the

1 Underpaid PTO Class and Former Employee Sub-Class because:

2  
3 [T]he Class' claims are based upon application of UHSJ's uniform policies through  
4 admittedly common practices that pervaded throughout the Class Period.  
5 Accordingly, no single class member can reasonably be said to have suffered  
6 substantially different damages or to have an emotional stake in the litigation that  
7 would motivate a desire to individually control prosecution of a separate action.  
8 Resolving the common liability issues here will undoubtedly foster judicial  
9 economy by efficiently adjudicating liability for more than 900 individuals at once.  
10 See *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands,*  
11 *Inc.*, 244 F.3d 1152, 1163-64 (9th Cir. 2001).

12 (ECF No. 46-1 at 23).

13 Defendant argues that certification is proper where the class action proceeding is superior  
14 to alternate means, and that "in federal courts a class action is not generally considered 'the  
15 superior method of adjudication of wage and hour claims.'" (*Id.* at 12 (citing *Jiminez v.*  
16 *Domino's Pizza, Inc.*, 238 F.R.D. 241, 253 (C.D. Cal. 2006)). Defendant further argues that  
17 "[t]here is no substantial benefit here given that there is already a consolidated case in state court  
18 that resolves all potential class issues for all employees, including Plaintiff's claims. Here, the  
19 parties in the state and federal actions are substantially the same and the issues are virtually  
20 identical." (ECF No. 50 at 13). Defendant also argues that "[t]he Order in Which the Courts  
21 Obtained Jurisdiction Suggests Lack of Superiority and Substantial Benefit" because the related  
22 state court cases against Defendant were filed first.<sup>6</sup> (*Id.* at 17). Additionally, certifying a federal  
23 class action is not superior because California law predominates the litigation. (*Id.* at 18).

24 Plaintiff replies that:

25 Defendant's sole argument against superiority is founded on the erroneous assertion  
26 that "a class action is not considered 'the superior method of adjudication of wage  
27 and hour claims'" and the illogical contention proceeding as a class action in this  
28 case is unnecessary and potentially unjust because of the State Court Action, **in  
which certification has neither been sought nor attained in the three years the  
matters have been pending** and no claims arising out of allegedly underpaid PTO  
are factually articulated. Defendant's position is untenable, focuses on irrelevant  
considerations, and is nothing more than a transparent attempt to distract this Court  
and avoid facing potential liability on a class-wide scale.

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<sup>6</sup> During the hearing on the motion, Defendant clarified that this argument was not based in the First to File Doctrine or the Colorado River Doctrine.

1 (ECF No. 53 at 10 (emphasis in original) (footnote omitted)).

2 The Court notes that superiority generally refers to whether class is the superior method  
3 rather than individual suits. Superiority does not refer to a case being superior to other cases.

4 Moreover, there is no law directing a federal court to deny class certification in lieu of  
5 other state cases, where the federal case is not otherwise stayed or dismissed in light of those state  
6 court cases. The case Defendant relies on to make the argument that this litigation is not superior,  
7 does not support its position. In context, *Jiminez*, reads:

8 To certify the class, the Court must also find that the class action is superior to other  
9 methods of adjudication. *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th  
10 Cir. 1996). “A class action is the superior method for managing litigation if no  
11 realistic alternative exists.” *Id.* at 1234-35. Here, other alternatives exist. First, each  
12 individual plaintiff can file a separate suit, following which consolidation may be  
13 appropriate. . . .

14 Because of manageability of this suit as a class is questionable and because there  
15 are viable alternatives, the Court finds that certification under Rule 23(b)(3) is  
16 inappropriate.

17 *Jimenez v. Domino’s Pizza*, 238 F.R.D. 241, 253-254 (C.D. Cal. 2006). Nothing in *Jiminez*  
18 indicates that state court litigation—or some other administrative alternative—is always superior  
19 to federal litigation. Also, as the Court already discussed above, the class size in this case is so  
20 numerous, that individual lawsuits would be impractical; therefore, there is not a realistic  
21 alternative to a class action in this case.

22 Moreover, Defendant already previously filed a motion to dismiss based on the argument  
23 that the claims in this litigation were redundant because they were already being asserted against  
24 UHC in multiple state court actions. (ECF No. 12). On January 26, 2024, Judge Thurston issued  
25 an order denying Defendant’s motion, finding that at least some claims in this case were uniquely  
26 pending here. (ECF No. 37). Therefore, the Court will not deny certification on the basis that  
27 there are other pending state court cases against Defendant.

28 The Court also notes that the consolidated *Moreno* case has not certified the entire class,  
has no pending motion for class certification, and, on the contrary, appears to be stayed for the  
time being to allow for settlement discussions.

Accordingly, for the reasons stated above, the Court finds that a class action is the

1 superior method for fairly and efficiently adjudicating the Underpaid PTO claims of Plaintiff and  
2 the proposed class.

3 In conclusion, the Court finds that Plaintiff has met her burden in satisfying the  
4 requirements of Rule 23(a) and Rule 23(b) as to the Underpaid PTO Class. Therefore, the Court  
5 recommends that the Underpaid PTO Class be certified.

6 **V. CONCLUSION AND RECOMMENDATION**

7 Based on the foregoing, IT IS RECOMMENDED that:

- 8 1. Plaintiff's request for judicial notice of the State Court Action (ECF No. 54) be  
9 GRANTED.  
10 2. Plaintiff's motion for class certification (ECF No. 46) be GRANTED.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
13 days after being served with these findings and recommendations, any party may file written  
14 objections with the Court. Such a document should be captioned "Objections to Magistrate  
15 Judge's Findings and Recommendations." Any reply to the objections shall be served and filed  
16 within thirty (30) days after service of the objections.

17 The parties are advised that failure to file objections within the specified time may result  
18 in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014)  
(citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19  
20 IT IS SO ORDERED.

21 Dated: March 25, 2025

22 /s/ Eric P. Gray  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26  
27  
28